

REMARKSStatus of the Application

Claims 1-11 are pending. Claims 6-9 and 11 are withdrawn from consideration as being directed to a non-elected species. Claims 1-5 and 10 have been rejected.

Section 102 RejectionsHerzfeld et al. U.S. Patent No. 6,254,154

Claims 1-4 and 10 continue to be rejected under 35 U.S.C. Section 102 as being anticipated by Herzfeld et al. U.S. Patent No. 6,254,154. Applicants have amended claim 1 to distinguish Herzfeld in at least the following four ways:

First, amended claim 1 requires a blade with a "straight leading edge" which Herzfeld does not teach. Rather, Herzfeld teaches a "digging member 18" which has a leading edge configured with a somewhat pointed leading edge suitable for digging (see Figure 1).

Second, amended claim 1 requires that the main handle be "fixedly attached to the blade" which Herzfeld does not disclose. Herzfeld teaches a main handle 12 that is pivotally attached to the digging member (col. 2, lines 34-36).

Third, amended claim 1 requires that the auxiliary handle be "pivotally attached to side lugs located at either end of the blade leading edge", which Herzfeld does not teach. Herzfeld's auxiliary handle 26 is pivotally attached to upturned portions 32, not lugs. Even if upturned portions 32 were considered to be lugs, the upturned portions are not located at either end of the blade leading edge.

Fourth, amended claim 1 requires that "the auxiliary handle is free to pivot about an axis defined by the leading edge independent of the main handle," which Herzfeld does not disclose.

Herzfeld teaches an auxiliary handle that pivots, but not about an axis defined by the leading edge (which is not straight anyway), and not independent of the main handle.

With regard to claim 3, it requires that the auxiliary handle have a "central stem extending from a free end" and "two diagonal struts extending from the central stem." Herzfeld has no such structure. Even if Herzfeld's arm portions 28 were considered to be equivalent to applicants' diagonal struts and Herzfeld's shaft 26 the equivalent of applicants' central stem, Herzfeld's auxiliary handle does not have a free end as required by claim 3.

With specific regard to claim 10, applicants have amended claim 10 in a manner similar to that of claim 1, and submit that claim 10 is now allowable for the same reasons as amended claim 1, including the fact that claim 10 requires (1) a blade with a straight leading edge, (2) a main handle fixedly attached to the blade, and (3) an auxiliary handle that pivots independently of the main handle.

Collins U.S. Patent No. 1,183,277

Claims 1, 2 and 10 are rejected under 35 U.S.C. Section 102 as being anticipated by Collins. Applicants have cancelled claim 2 and submit that amended claims 1 and 10 are readily distinguishable from Collins because they include the following limitations not taught or suggested by Collins:

- (1) The blade must have a straight leading edge (Collins blade is pointed.)
- (2) The main handle must be fixedly attached to the blade. (Collins main handle 1 pivots.)
- (3) The auxiliary handle must pivot about an axis defined by the blade leading edge. (Collins' rod 17 0 which is not a handle - does not.)

(4) The auxiliary handle must pivot independently of the main handle. (Collins rod 17 does not pivot independently of the main handle 1 because it is connected to the main handle by linkage at 9-14.)


Section 103 Rejections

The Examiner rejected claim 5 under 35 U.S.C. Section 103(a) as being unpatentable over Herzfeld 6,254,154 in view of Kegan, Sr. 6,203,081. Applicants submit that claim 5 is allowable for at least the same reasons as its base claim.

Summary

It is believed that this paper constitutes a complete response to the Office Action mailed June 7, 2005 and an early and favorable action allowing claims 1, 3, 5 and 10 is respectfully requested. The Examiner is invited to telephone applicants' undersigned attorney if any unresolved matters remain.

Respectfully submitted,

  
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